



In the Matter of the Appeal of)
)
 FRANCIS J. AND JANYCE M. SHIPPY)

For Appellants: Francis J. Shippy,
in pro. per.

For Respondent: John R. Akin,
Counsel

This appeal is made pursuant to section 18593 of the, Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Francis J. and Janyce M. Shippy against proposed assessments of additional personal income tax and penalties in the total amounts of \$1,206.13 and \$1,269.30 for the years 1976 and 1977, respectively.

Appeal of Francis J. and Janyce M. Shippy

In 1976, appellant Francis Shippy created the "F. J. Shippy Equity Trust", to which the appellants conveyed all their real and personal property as well as "the exclusive use of [their] lifetime services and, all of the currently earned remuneration therefrom"

On their joint personal income tax return for 1976, appellants reported total income of \$40,491, composed of \$33,838 in wages, \$119 in interest, and \$6,534 in income from the trust. From this total, appellants subtracted \$20,832 as payments of "nominee income to F. J. Shippy Equity Trust", and they also deducted \$2,000 as the cost of establishing and maintaining the trust. For the taxable year 1977, appellants reported total income of \$55,332, consisting of \$37,485 in wages and \$17,847 in income from the trust. From this total, appellants subtracted \$37,485 in payments to the trust. For each year, the trust filed a return which reported the nominee income deducted on appellants' returns.

In 1978, respondent requested information from appellants regarding the nature of the trust and learned, among other things, that the Internal Revenue Service had made several audit adjustments to appellants' 1976 federal return. Specifically, the Service (1) disallowed appellants' claimed deductions for "nominee income" and for the cost of the trust, (2) reduced their reported income by the amount (\$6,534) received from the trust, and (3) imposed a negligence penalty. Respondent issued a proposed assessment for 1976 based on the federal adjustments, and further determined that similar adjustments should be made to appellants' reported income on their 1977 state return. Both assessments included negligence penalties.

Appellants' principal contention is that respondent improperly ruled that their wages were taxable to them personally instead of to the trust. Respondent's determination was based on its conclusion that the trust lacks economic reality and is therefore a nullity for tax purposes. This conclusion is amply supported by prior decisions of this board and of the courts (see, e.g., Appeal of Edward B. and Betty G. Gillespie, Cal. St. Bd. of Equal., Oct. 27, 1981; Louis Markosian, 73 T.C. 1235 (1980)), wherein trusts substantively indistinguishable from the present one were disregarded for tax purposes. We also note that the trust is void under California law to the extent that it consists of property which cannot be held in trust, i.e., appellants' future earnings. (See Appeal of Glen S. Hayden, Cal. St. Bd. of Equal., March 3, 1982.)

Appeal of Francis J. and Janyce M. Shippy

Appellants also contend that the cost of their trust is deductible because Mr. Shippy was required to buy the trust materials as a condition of his secondary employment as a trust salesman. Deductions are a matter of legislative grace and the taxpayer has the burden of proving that he is entitled to the deduction claimed. (New Colonial Ice Co. v. Helvering 292 U.S. 435 [78 L.Ed. 1348] (1934).) In the present case: the required proof is absent. Appellants have not established that Mr. Shippy was in fact a salesman of family trusts, or that maintaining his own trust constituted a bona fide educational program that maintained or improved his skills as a trust salesman. Although appellants claim that they reported commission income from trust sales, we have found no such income listed on their returns. We conclude, therefore, that appellants' costs for their trust materials were personal, nondeductible expenditures. (See Ronald E. Morgan, ¶ 78,401 P-H Memo. T. C. (1978); Rev. Rul. 79-324, 1979-2 Cum. Bull. 113.)

Finally, appellants argue that they should be relieved of the negligence penalties, because their trust differed materially from the other family trusts which have uniformly been declared invalid for federal and state tax purposes. Appellants bear the burden, of course, of proving that the negligence penalties were not properly imposed. (Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Once again, they have not met their burden. As we indicated, their trust did not differ materially from other family trusts. It was, in fact, a sham whose only purpose was the avoidance of tax. (See Appeal of Edward B. and Betty G. Gillespie, supra.)

For the above reasons, respondent's action in this matter will be sustained.

Appeal of Francis J. and Janyce M. Shippy

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and **Taxation** Code, that the action of the Franchise Tax Board on the protest of Francis J. and Janyce M. Shippy against proposed assessments of additional personal income tax and penalties in the total amounts of **\$1,206.13** and **\$1,269.30** for the years 1976 and 1977 respectively, be and the same is hereby sustained.

Done at Sacramento, California, this **14th** day of October , 1982, by the State Board of Equalization, with Board **Members** Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett-, Chairman
Conway H. Collis W & 1 , Member
Ernest J. Dronenburg, Jr.-, Member
Richard Nevins , Member
_____, Member